SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 791.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

JAMES BUTT, ALIAS WONG SING.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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a In the Southern Division of the District Court of the United States, Northern District of California, First Division.

THE UNITED STATES OF AMERICA,
vs.
JAMES BUTT, ALIAS WONG SING. } No. 7825.

1 In the Southern Division of the United States District Court, for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Præcipe.

(For transcript on writ of error.)

To the clerk of said court:

SIR: Please make copies of the following papers to be used in preparing transcript on writ of error to the United States Supreme Court:

1. Indictment, filed July 11, 1919.
2. Motion to quash indictment, filed Sept. 6, 1919.
3. Opinion and order granting motion to quash indictment, and judgment, filed November 17, 1919.
4. Plaintiff's notice of motion, filed November 22, 1919.
5. Plaintiff's motion for an order vacating order sustaining motion to quash indictment and for an order overruling motion to quash indictment filed Nov. 22, 1919.
6. Minute order made November 29, 1919, vacating order of November 17, 1919, granting motion to quash indictment.
7. Demurrer to plea of former jeopardy.
8. Opinion and order sustaining motion to quash indictment, and judgment, filed December 12, 1919.
9. Minute order made December 18, 1919, allowing exception on behalf of the United States to the opinion and order of December 12, 1919, sustaining motion to quash indictment.

2 10. Petition for writ of error.
11. Assignments of errors.
12. Order allowing writ of error.
13. Citation, filed January 7, 1920.
14. Præcipe.

ANNETTE ABBOTT ADAMS,
United States Attorney.
BEN F. GEIS,
Asst. United States Attorney.

(Endorsed:) Receipt of a copy of the within acknowledged this 10th day of February, 1920. Geo. A. McGowan, Atty. for Defendant. Filed Feb. 10, 1920. W. B. Maling, Clerk, by C. M. Taylor, Deputy Clerk.

3 In the Southern Division of the United States District Court for the Northern District of California, First Division.

Indictment.

At a stated term of said court begun and holden at the city and county of San Francisco, within and for the Southern Division of the Northern District of California, on the first Monday of March in the year of our Lord one thousand nine hundred and nineteen.

The grand jurors of the United States of America, within and for the division and district aforesaid, on their oaths present: That James Butt, alias Wong Sing, hereinafter called the defendant, heretofore, to wit, on or about the fourteenth day of April in the year of our Lord one thousand nine hundred and nineteen, at the port and bay of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there being, did then and there wilfully, unlawfully, knowingly, and feloniously bring four Chinese aliens, to wit, Jeung Chang, Lee Lim, Chan Sang, and Jung Foo, into the United States, to wit, into the bay and port of San Francisco in the division and district aforesaid, and into the jurisdiction of this court, by vessel, to wit, by and in that certain schooner named and known as the "Lizzie Vance," on said vessel's voyage upon and across the high seas from Papeete, Tahiti, South Sea Islands, to and into the bay and port of San Francisco, within the United States, which said voyage commenced at Papeete on or about the 22nd day of February, 1919, and ended on the 14th day of April, 1919, in the bay and port of San Francisco, California, within the United States, and during all of said period of time and voyage the said aliens and said

4 defendant were on board of said vessel.

That at all of the times herein mentioned and referred to, the said Jeung Sang, Lee Lim, Chan Sang, and Jung Foo, were Chinese aliens, laborers, and natives of China, and of Chinese descent, and said aliens had not, nor had either of them, ever been in the United States prior to having been so brought therein at the time and place aforesaid by the said defendant on said voyage, and said aliens were not nor was either of them officers or an officer of said vessel or members or a member of the vessel's crew, or seamen or a seaman or in any way employed on said vessel at all.

That the said aliens had not, nor had either of them, at the time the said defendant brought them into the United States, nor at any time or ever, been duly admitted or at all admitted into the United States by an, or any, immigrant inspector or immigrant inspectors, nor by any person or persons in any way authorized or empowered to admit said aliens, or either or any of them, into the United States, and the said aliens were not, nor was any of them, at the time said defendant brought them into the United States, or at any time, lawfully entitled, or at all entitled to enter or reside within the United States under the, or any of the terms of the act of Congress of the

United States of February 5th, 1917, regulating immigration of aliens to, and residence of aliens in, the United States, and known as the immigration act, or entitled to enter into, be, or reside within the United States at all, in; that said Jeung Sang, Lee Lim, Chan Sang, and Jung Foo were, at the time they were brought into the United States by defendant, aliens as aforesaid, excluded and prevented from entering into the United States under the laws
5 of the United States.

That the said defendant at all times herein mentioned, and particularly at the time when defendant brought the said aliens into the United States as aforesaid well knew; that the said Jeung Sang, Lee Lim, Chan Sang, and Jung Foo were Chinese aliens, laborers, natives of China and of Chinese descent, that neither of said aliens was an officer, member of said vessel's crew, a seaman, or employed in any way on said vessel, and that said aliens had never been within the United States prior to defendant's bringing them in at the time and place aforesaid, and that said aliens had never been duly admitted or at all admitted into the United States by an immigrant inspector or immigrant inspectors, nor by any person authorized to admit said aliens into the United States, and that said aliens were not lawfully or at all entitled to enter or reside within the United States under the act of Congress of the United States of February 5th, 1917, known as the immigration act; and well knew at the time said defendant brought said aliens into the United States, that said aliens were not entitled to enter into, be, or reside within the United States at all.

That at all times herein mentioned, the said vessel "Lizzie Vance" was owned by Henry Gray & Company, used and operated by said company in foreign commerce and trade, from and between Papeete, Tahiti, South Sea Islands, to San Francisco, California, in the United States, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

6 Second count.

And the grand jurors aforesaid, on their oaths aforesaid, do further present: That James Butt, alias Wong Sing, hereinafter called the defendant, heretofore, to wit, on the fourteenth day of April in the year of our Lord one thousand nine hundred and nineteen, on the bay of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court then and there being, did then and there wilfully, unlawfully, knowingly, and feloniously conceal and harbor in a vessel, to wit, in that certain schooner named and known as the "Lizzie Vance," four Chinese aliens, natives of China, of Chinese descent, and laborers, to wit, Jeung Sang, Lee Lim, Chan Sang, and Jung Foo, which said vessel was then and there on the bay of San Francisco, within the State of

California, and within the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court, and which said vessel had then and there completed her voyage from Papeete, Tahiti, South Sea Islands, and in and upon which said vessel the said aliens and the said defendant had then and there come from Papeete, Tahiti, in the South Sea Islands, into the United States, for the purpose and with the intent on the part of the said aliens to land and reside in the United States.

That at all the times herein mentioned and referred to, and at the time of the concealment and harboring aforesaid, the said Jeung Sang, Lee Lim, Chan Sang, and Jung Foo, were Chinese aliens, natives of China, of Chinese descent, and laborers, and were not, nor was any of them an officer of said vessel, nor a member of the said vessel's crew, nor seamen, and the said aliens had not, nor had
7 either of them been duly or at all admitted into the United States by an or any immigrant inspector or immigrant inspectors, nor admitted into the United States by any person or persons having any authority whatever to admit said aliens or either of them into the United States, and said aliens were not, nor was either of them, at the time said defendant concealed and harbored them, nor at any time, lawfully entitled, or at all entitled to enter, be, or reside within the United States under the, or any of the, terms of the act of Congress of the United States, of February 5th, 1917, regulating immigration of aliens to and residence of aliens in, the United States and known as the immigration act of February 5th, 1917, nor were said aliens entitled to enter, be, or reside within the United States at all, and the said aliens had not, nor had either of them ever, prior to their said concealment or harboring, been within the United States at all.

That the said defendant at all times herein mentioned, and at the time he concealed and harbored the said aliens well knew; that each of said aliens, at all times herein mentioned, was a Chinese alien of Chinese descent, a native of China, a laborer, and not an officer of said vessel, nor a member of the vessel's crew, nor a seaman, and that said aliens had not and that none of them had ever been duly or at all admitted into the United States by an immigrant inspector or inspectors, or by any person having any authority to admit said or any of said aliens into the United States; and defendant at all the times herein mentioned well knew; none of said aliens were ever lawfully or at all entitled to enter, be, or reside within the United States under the or any of the terms of the act of Congress of the United States of February 5th, 1917, regulating immigration of aliens
8 to and residence of aliens in the United States known as and called the immigration act of February 5th, 1917; and that defendant at all times herein mentioned well knew; that said aliens were not entitled to enter, be, or reside in the United States at all, and that said aliens had not, and that none of them had ever been in the United States prior to the time of their said concealment and har-

boring by defendant; and defendant at all times herein mentioned well knew that it was at all the times herein mentioned the purpose and intention of said aliens and each of them to land and reside in the United States.

That at all times herein mentioned, the said vessel "Lizzie Vance" was owned by Henry Gray & Company and was used and operated by said company in foreign commerce and trade from and between Papeete, Tahiti, South Sea Islands, to San Francisco, California, in the United States, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

Third count.

And the grand jurors aforesaid, on their oaths aforesaid, do further present: That James Butt, alias Wong Sing, hereinafter called the defendant, on or about the fourteenth day of April in the year of our Lord one thousand nine hundred and nineteen, at the port and bay of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there being did wilfully, unlawfully, knowingly, and feloniously bring from Papeete, Tahiti, South Sea Islands, into the United States, to wit, into the port and bay of San Francisco, in the division and district aforesaid, by vessel, to wit, by and in that certain schooner named and known as the "Lizzie Vance," four alien stowaways to wit, Jeung Sang, Lee Lim, Chan Sang, and Jung Foo.

That said aliens, at the time the said defendant so brought said aliens into the United States, were, and the said defendant at all times herein mentioned well knew; said aliens were Chinese aliens, natives of China, of Chinese descent, and stowaways not admissible or ever admitted into the United States.

That said aliens had not, nor had either of them at the time the said defendant so brought them into the United States as such stowaways, ever been duly or at all admitted into the United States by an immigrant inspector or immigrant inspectors nor by any person or persons in any way authorized or empowered to admit said aliens or any of them into the United States, and said aliens were not, and defendants knew said aliens were not, at the time defendant brought them into the United States, lawfully, or at all entitled to enter or reside within the United States under the, or any of the, terms of the act of Congress of the United States of February 5th, 1919, regulating immigration of aliens to and residence of aliens in, the United States, and known as the immigration act, or entitled to enter the United States at all, in; that said Jeung Sang, Lee Lim, Chan Sang, and Jung Foo, were, at the time they were so brought into the United States by defendant, aliens as aforesaid, and stowaways not admissible into the United States, and excluded and prevented from entering the United States.

That the said vessel, to wit, the schooner "Lizzie Vance" at all times herein mentioned belonged to Henry Gray and Company and was at the time said aliens were brought into the United States, engaged in foreign commerce and trade, between Papeete, Tahiti, South Sea Island and San Francisco, California, in the United States and used said vessel therein, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

10

— Fourth count.

And the grand jurors aforesaid, on their oaths aforesaid do further present: That James Butt, alias Wong Sing, hereinafter called the defendant, on or about the 14th day of April in the year of our Lord one thousand nine hundred and nineteen, at the port and bay of San Francisco, in the Southern Division of the Northern District of the State of California then and there being, did wilfully, knowingly, unlawfully, and feloniously attempt by himself and through the Henry Gray and Company, to bring by vessel, to wit: the schooner named and known as the "Lizzie Vance," from Papeete, Tahiti, South Sea Islands, into and land in the city of San Francisco, California, United States of America, in the Southern Division of the Northern District of the State of California, and jurisdiction of this court, four Chinese aliens, to wit: Jeung Sang, Lee Lim, Chan Sang, and Jung Foo.

That at all times herein mentioned, said aliens were Chinese aliens, natives of China, of Chinese descent, and laborers, and said aliens were not nor was any of them duly admitted or at all admitted into the United States by an immigrant inspector or immigrant inspectors, and said aliens were not nor was any of them lawfully or at all entitled to enter, land, or reside within the United States under the or any of the terms of the act of Congress of the United States of February 5th, 1917, known as the immigration act, or any of the laws of the United States and that said aliens had not nor had any of them ever been in the United States. That said aliens were not nor was any of them an officer of said vessel, a member of the vessel's crew, a seaman, or in any way employed on said vessel.

11

That at all times herein mentioned, said defendant well knew; that Jeung Sang, Lee Lim, Chan Sang, and Jung Foo were Chinese aliens, laborers, natives of China and of Chinese descent, and that neither of said aliens was an officer, member of said vessel's crew, a seaman, or in anyway employed on said vessel, and said defendant at all times herein mentioned, well knew; that said aliens had never been in the United States, and had not, and that none of them had ever, been duly or at all admitted into the United States by an immigration inspector, and defendant at all times herein mentioned well knew that said aliens were not and that none of them were or was

lawfully entitled or at all entitled to enter or land within the United States, under the act of Congress of the United States of February 5th, 1917, known as the immigration act; and defendant at all times herein mentioned, well knew that said aliens were not entitled to enter or land in the United States at all.

That at all times herein mentioned, the said vessel, "Lizzie Vance," was owned by said Henry Gray & Company, used and operated by said company in foreign commerce and trade, from and between Papeete, Tahiti, South Sea Islands, to San Francisco, California, in the United States, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

ANNETTE ABBOTT ADAMS,
United States Attorney.

12 (Endorsed:) A true bill. Joseph Magner, foreman grand jury. Filed Jul. 11, 1919. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk.

13 In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES, PLAINTIFF, *vs.* JAMES BUTT, DEFENDANT.	No. 7825.

Motion to quash indictment.

Comes now the defendant, James Butt, and moves this court for an order quashing the indictment herein and each and all of the counts thereof, upon the following grounds and for the following reasons, to wit:

1. That there is an improper joinder of each of the four counts in the same indictment.

2. That the indictment herein does not, nor do any of the counts thereof, state facts sufficient to, and the said indictment does not, nor do any of the counts thereof, charge an offense under any law of the United States.

3. That the indictment herein does not, nor do any of the counts thereof, state facts sufficient to, and the said indictment does not, nor do any of the counts thereof, charge an offense under any law of the United States against this defendant.

14 4. That the matters and things complained of in said indictment and in each of the counts thereof are res adjudicata between the plaintiff and this defendant, they, the said matters and things so complained of, having been the subject of an earlier indictment made and returned in this court and numbered 7782 in the records of this court. That a motion to quash said indictment was filed and was sustained as to the first two counts thereof and judg-

ment entered in accordance therewith is now in full force and effect and has never been appealed from, and the plaintiff is therefor bound thereby and estopped from ignoring said judgment. That a certified copy of said indictment, said motion to quash, the opinion and judgment rendered thereon are hereunto annexed and marked Exhibit "A" and are hereby designated and referred to with the same force and effect as if set forth in full herein.

5. That the matters and things complained of in the said indictment and in each of the counts thereof are and each of them are matters and things that with respect to which this defendant has been once in jeopardy and has already been acquitted of the offense charged by the verdict of the jury and the judgment entered thereon in this court on the 1st day of July, 1919. That a certified copy of said indictment, verdict of the jury, and the judgment entered thereon are hereunto annexed and contained in said Exhibit "A" and are hereby designated and referred to with the same force and effect as if set forth in full herein.

Wherefor this defendant respectfully prays that this said indictment and each of the counts thereof be quashed by said court and the above-entitled action be dismissed, and that this defendant be acquitted and discharged, that his bail be exhonorated, and
15 that this defendant go hence without day.

GEO. A. MCGOWAN,
Attorney for Defendant.

Dated San Francisco, Cal., August 30th, 1919.

16 EXHIBIT "A."

In the Southern Division of the United States District Court for the Northern District of California, First Division.

At a stated term of said court, begun and holden in the city and county of San Francisco, within and for the Southern Division of the Northern District of California, on the first Monday of March, in the year of our Lord one thousand nine hundred and nineteen.

The grand jurors of the United States of America, within and for the division and district aforesaid, on their oaths present: That James Butt, alias Wong Sing, hereinafter called the defendant, heretofore, to wit, on or about the fourteenth day of April, in the year of our Lord one thousand nine hundred and nineteen, at San Francisco in the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully, and feloniously bring four alien Chinese persons, to wit, Jeung Sang, Lee Lim, Chan Sang, and Jung Foo from Papeete, one of the South Sea Islands in the Pacific Ocean, into the United States, by vessel, to wit, by and on the schooner named and known as the "Lizzie Vance;"

That the said Jeung Sang, Lee Lim, Chan Sang, and Fung Foo were at all times herein mentioned aliens not duly or ever, or at all admitted into the United States by an, or any, immigrant inspector or inspectors, and the said Jeung Sang, Lee Lim, Chan Sang, and
17 Jung Foo were not, nor was either of them, lawfully, or at all, entitled to enter or reside in the United States under the act of Congress of the United States of February 5, 1917, regulating immigration of aliens to and residence of aliens in the United States and known as the immigration act, or otherwise or at all entitled to enter or reside in the United States, and the said defendant at all times herein mentioned well knew that the said above-named persons and each of them were aliens not duly or ever, or at all admitted into the United States by an, or any, immigrant inspector or inspectors, and said defendant at all times herein mentioned well knew that the said above-named persons were not legally, or at all, entitled to enter or reside within the United States under the act of Congress of the United States of February 5, 1917, regulating immigration of aliens to and residence of aliens in the United States, known as the immigration act, or otherwise, or at all entitled to enter or reside within the United States;

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America, in such case made and provided.

Second count.

And the grand jurors aforesaid, on their oaths aforesaid, do further present: That James Butt, alias Wong Sing, hereinafter called the defendant, heretofore, to wit, on or about the fourteenth day of April, in the year of our Lord one thousand nine hundred and nineteen, at San Francisco, in the Southern Division of the Northern District of the State of California, and within the purisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully, and feloniously attempt to bring four alien Chinese
18 persons, to wit, Jeung Sang, Lee Lim, Chan Sang, and Jung Foo from Papeete, one of the South Sea Islands in the Pacific Ocean, into the United States, by vessel, to wit, by and on the schooner named and known as the "Lizzie Vance;"

That the said Jeung Sang, Lee Lim, Chan Sang and Jung Foo were at all times herein mentioned aliens not duly, or ever, or at all, admitted into the United States by an, or any, immigrant inspector or inspectors, and the said Jeung Sang, Lee Lim, Chan Sang and Jung Foo were not, nor was either of them, lawfully, or at all, entitled to enter or reside in the United States under the act of Congress of the United States of February 5, 1917, regulating immigration of aliens to, and residence of aliens in, the United States and known as the immigration act, or otherwise, or at all, entitled to enter or reside in the United States, and the said defendant at all times herein mentioned well knew that the said above-named persons and

each of them were aliens not duly or ever, or at all, admitted into the United States by an, or any, immigrant inspector or inspectors, and said defendant at all times herein mentioned well knew that the said above-named persons were not legally, or at all, entitled to enter or reside within the United States under the act of Congress of the United States of February 5, 1917, regulating immigration of aliens to, and residence of aliens in, the United States, known as the immigration act, or otherwise, or at all entitled to enter or reside within the United States;

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America, in such case made and provided.

Third count.

And the grand jurors aforesaid, on their oaths aforesaid, do
19 further present: That James Butt, alias Wong Sing, hereinafter called the defendant, heretofore, to wit, on or about the fourteenth day of April, in the year of our Lord one thousand nine hundred and nineteen, at San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there being, did then and there wilfully, knowingly, unlawfully, and feloniously aid and abet the landing in the United States at the Port of San Francisco, in the division and district aforesaid, from a certain vessel, to wit, a schooner named and known as the "Lizzie Vance," four alien Chinese persons, to wit, Jeung Sang, Lee Lim, Chan Sang and Jung Foo, which said four alien Chinese persons were not, nor was either of them, lawfully, or at all, entitled to enter the United States, in this, to wit, that the said Jeung Sang, Lee Lim, Chan Sang and Jung Foo and each of them were at all times herein mentioned alien Chinese laborers who had at no time theretofore been in the United States, and the said defendant at all times herein mentioned well knew that the said Jeung Sang, Lee Lim, Chan Sang and Jung Foo were alien Chinese laborers and were not, nor was either of them, lawfully, or at all, entitled to enter or land in the United States, and that the said Jeung Sang, Lee Lim, Chan Sang and Jung Foo had not, nor had either of them theretofore been in the United States.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America, in such case made and provided.

ANNETTE ABBOTT ADAMS,
United States Attorney.

(Endorsed:) A true bill. Joseph Magner, foreman grand jury. Filed May 27, 1919. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk.

20 (EXHIBIT "A.")

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, DEFENDANT. } 7782.

Motion to quash indictment.

Comes now the defendant, James Butt, and moves this court to quash the indictment herein, in each and all of the counts in said indictment contained, on the following grounds and for the following reasons, to wit:

I.

That there is an improper joinder of each of said three counts in same indictment.

II.

That no offense against any law of the United States is charged, set forth, or alleged in said indictment, or in any of the counts thereof.

III.

That no offense against any law of the United is charged, set forth, or alleged in said indictment, or in any of the counts thereof against this defendant.

Wherefore this defendant respectfully prays that said indictment and each and all of the counts thereof be quashed by said court, and that the above-entitled action be dismissed, and that this defendant be acquitted and discharged, and that the bail of this defendant herein be exonerated.

21 Dated San Francisco, California, May 29, 1919.

GEORGE A. MCGOWAN,
Attorney for Defendant.

Service of the within motion to quash indictment and receipt of a copy thereof is hereby admitted this 29th day of May, 1919.

ANNETTE ABBOTT ADAMS,
United States Attorney for the Northern District of California.

(Endorsed:) Filed May 29th, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

22 (EXHIBIT "A.")

In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES *vs.* JAMES BUTT, ALIAS WONG SING.	No. 7782.

Annette Abbott Adams, United States attorney, and Benj. F. Geis, Esq., assistant United States attorney, attorneys for the United States.

George A. McGowan, Esq., attorney for defendant.

Memorandum.

RUDKIN, District Judge. The indictment in this case contains three counts. The first two counts are based on section 8 of the immigration act of February 5, 1917, while the third count is based on section 11 of the Chinese exclusion act of July 5, 1884, 23 Stat., 117. All three counts, however, are based on the same act or transaction; namely, the unlawful landing of four Chinese laborers in the United States. The defendant has interposed a motion to quash the indictment for misjoinder, and because each of the counts fails to charge facts constituting a crime under the laws of the United States. If each of the several counts charges a crime, it is quite manifest that there is no misjoinder because section 1024 of the Revised Statutes provides as follows:

"When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined in one indictment in separate counts: and if two or more indictments are found in such cases, the court may order them consolidated."

23 The sufficiency of the first two counts to charge a crime, however, presents a more difficult question. This question was before the court in Stoneberg vs. Morgan, 246 Fed., 98. In that case the indictment contained two counts, one based on the Chinese exclusion act, the other on section 8 of the immigration act of February 20, 1907. The court there held that the count based on the immigration act failed to charge a crime. The reason for this conclusion was thus stated by the learned judge who delivered the opinion of the court:

"What, then, is the true construction and effect of two laws, the earlier of which treats of a specific class or subject, and the latter of which treats generally of many classes or subjects, including that treated in the earlier act, without repealing that act. The answer is: Where an earlier act prescribes the puishment for a specific class of offenses, or otherwise treats of a specific subject, that act is not af-

fected by a subsequent general law which prescribes the punishment for many classes of offenses, including that class treated by the earlier special law, or treats of many subjects, including that treated by the earlier special law; but, unless a contrary intent is clearly expressed or indubitably inferable from the acts, they must stand and be read and construed together as a single act, the act regarding the specific class or subject as the law of that class or subject, and the later more comprehensive as the general law of the classes or subjects not treated by the earlier act."

There is nothing in the immigration act of February 5, 1917, to differentiate this case from the Stoneberg case. There, as here, one count of the indictment is based on the Chinese exclusion act. There, as here, the other count or counts of the indictment are based on section 8 of the immigration act, which is substantially the same whether we look to the act of 1907 or the act of 1917. The repealing clause, found in section 43 of the act of February 20, 1907, contains the proviso:

"Provided, That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent * * *."

24 The repealing clause of the act of February 5, 1917, contains the same proviso with the addition "except as provided in section nineteen hereof." The provision of section 19, referred to in the proviso, relates to the deportation of aliens unlawfully found within the United States, not to the unlawful entry as defined by section 8.

For the reasons stated therefore I am of the opinion that the first and second counts fail to state facts sufficient to constitute a crime, and, as to them, the motion to quash is granted. As to the third count, which seems to be sufficient under the Chinese exclusion act, the motion is denied. Let an order be entered accordingly.

(Endorsed:) Filed Jun. 4, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

25 (EXHIBIT "A.")

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA *vs.* JAMES BUTT, ALIAS WONG SING.	No. 7782.

In this case the defendant having made a motion to quash the indictment;

Now, therefore, after hearing the arguments of the respective counsel, it is ordered that the motion to quash counts one and two of the indictment be, and the same are hereby, granted.

Judgment entered this 4th day of June, A. D. 1919.

WALTER B. MALING, *Clerk.*
By C. W. CALBREATH, *Deputy Clerk.*

26 (EXHIBIT "A.")

In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA
vs.
JAMES BUTT, ETC. } No. 7782.

We, the jury, find James Butt, the defendant at the bar, not guilty on the third count of the indictment, being instructed so to do.

H. C. NORTON, *Foreman.*

(Endorsed:) Filed July 1, 1919, at 10 o'clock and 10 minutes a. m. W. B. Maling, clerk. By Lyle S. Morris, deputy clerk.

27 (EXHIBIT "A.")

In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA,
vs.
JAMES BUTT, ALIAS WONG SING. } No. 7782. Charged with a violation of section 8 act Feb. 5, 1917, and section 11 act July 5, 1884.

Judgment on verdict of not guilty.

This cause came on regularly for trial on the 30th day of June, 1919, B. F. Geis, Esquire, assistant United States attorney, appearing on behalf of the United States, and Geo. A. McGowan, Esquire, as attorney for defendant.

Thereupon a jury of twelve persons was duly accepted, impaneled, and sworn, to try said defendant.

Whereupon, after hearing the evidence, the arguments of counsel, the court instructed the jury to return a verdict of not guilty. Thereupon the jury rendered the following written verdict, which was by the court ordered recorded on the minutes of the court and which verdict is as follows: "We, the jury, find James Butt, the defendant at the bar, not guilty on the third count of the indictment, being instructed so to do. H. C. Norton, foreman."

It is therefore ordered and adjudged that the said James Butt be discharged from custody, and that he go hence without day, and that his bond be, and the same is hereby, exonerated.

Judgment entered this 1st day of July, 1919.

WALTER B. MALING, *Clerk,*
By C. W. CALBREATH, *Deputy Clerk.*

28 (EXHIBIT "A.")

I, Walter B, Maling, clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing is a full, true, and correct copy of the indictment, motion to quash indictment, memorandum opinion and order granting motion to quash 1st & 2nd counts of the indictment and denying motion to quash 3rd count, judgment as to counts 1 and 2, verdict of the jury as to the 3rd counts and judgment on verdict, in case No. 7782, the United States of America vs. James Butt, alias Wong Sing, No. 7782, as the same now remains on file and of record in my office.

Attest my hand and seal of the said United States District Court, Northern District of California, at San Francisco, California, this 29th day of August, A. D. 1919.

[SEAL.] WALTER B. MALING, *Clerk*,
By C. W. CALBREATH, *Deputy Clerk*.

29 In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA
vs.
JAMES BUTT, ALIAS WONG SING. } No. 7825.

George A. McGowan, Esp., attorney for defendant.

Annette Abbott Adams, United States attorney, and Ben F. Geis, Esq., assistant United States attorney, attorneys for the United States.

Opinion and order granting motion to quash indictment, November 17, 1919.

RUDKIN, District Judge: The indictment in this case charges in four separate counts that the defendant on the 14th day of April, 1919, did wilfully, unlawfully, knowingly, and feloniously bring four Chinese aliens into the United States, to wit: Into the bay and port of San Francisco and within the jurisdiction of this court, by a vessel from the South Sea Islands, in violation of section 8 of the immigration act of February 5, 1917. The case is now before the court on motion to quash. Practically the same question was before this court on motion to quash an indictment heretofore returned against the same defendant charging a violation of section 11 of the Chinese exclusion act of July 5, 1884, 23 Statutes at Large, 117, and section 8 of the immigration act in question. I there held, following the case of Stoneberg vs. Morgan, 246 Fed., 98, from the Circuit Court of Appeals of the Eighth Circuit, that the Chinese ex-

30 clusion act was not superseded by the immigration act and that the counts based on the immigration act were bad. It seems to me that ruling is controlling here. Section 11 of the Chinese exclusion act provides:

"That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, or any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined not exceeding one thousand dollars and imprisoned for a term not exceeding one year."

Section 38 of the immigration act of May 5, 1917, expressly provides that that act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in section 19 thereof. As pointed out in my former opinion section 19 provides for the deportation of aliens unlawfully in the country and has no reference to the exclusion of aliens from the country. And if the immigration act does not repeal, alter, or amend the Chinese exclusion act, it would seem to follow as a matter of course that this case must be prosecuted under the exclusion act if at all, and not under the immigration act.

The defendant, as stated by counsel for the Government, has already been tried on the charge of violating the Chinese exclusion act, but the prosecution failed because the Government was unable to prove that the Chinese in question were actually landed in the United States. Conceding this to be true, that fact demonstrates not that the case is controlled by the immigration act, but that there is no law govering the particular case.. For if the court should now hold that this case is controlled by the immigration act, then

31 it would follow as a matter of course that the Chinese exclusion act has been altered and amended by the later act notwithstanding the legislative declaration to the contrary.

A motion to quash has been interposed on the ground of a former acquittal of the defendant on the same charge. Of course the defense of former acquittal or former conviction can not be raised by motion to quash, but inasmuch as the motion to quash in question raises the sufficiency of several counts to charge a crime it will be sustained upon that ground. Let an order be entered accordingly.

November 17th, 1919.

(Endorsed:) Filed Nov. 17, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

32 In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA
vs.
JAMES BUTT, ALIAS WONG SING. | No. 7825.

Judgment.

(November 17, 1919.)

In this case the defendant's motion to quash having been heretofore granted, it is therefore ordered that the indictment herein as against James Butt, alias Wong Sing, be and the same is hereby dismissed and that the defendant go hence without day.

Judgment entered this 17th day of November, A D. 1919.

WALTER B. MALING, *Clerk*,
By C. W. CALBREATH, *Deputy Clerk.*

(Endorsed:) Entered in vol. 9, judg. and decrees, at page 206.

33 In the United States District Court in the Southern Division of the Northern District of the State of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. | No. 7825.

Notice of motion to vacate order sustaining motion to quash indictment.

To the above-named defendant and to George A. McGowan, his attorney: You and each of you will please take notice that the above-named plaintiff will, on the 29th day of November, 1919, at 10 o'clock a. m. of said day, at the court room of the above-named court in the United States Post Office Building, corner of Seventh and Mission Streets in the city and county of San Francisco, California, move the above-named court for an order vacating and setting aside the order sustaining defendant's motion to quash the indictment herein and for an order overruling said motion of said defendant to quash the said indictment. The said motion will be made and based upon the grounds set out in the motion hereto attached.

Respectfully,

BEN. F. GEIS,
Asst. United States Attorney.

Receipt of copy hereby admitted this 22nd day of Nov., 1919.

GEO. A. MCGOWAN,
Atty. for Defendant.

(Endorsed:) Filed Nov. 22, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

34 In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Motion for an order vacating order sustaining motion to quash indictment and for an order overruling motion to quash indictment herein.

Comes now the above-named plaintiff, by the United States attorney, attorney for said plaintiff, and moves the above-named court for an order setting aside and vacating the order made and entered herein on the 17th day of November, 1919, quashing the indictment in the above-entitled action, and for an order overruling said motion of defendant to quash said indictment.

The said motion is and will be made and based upon the pleadings and papers on file in the above-entitled action and upon the further ground that as a fact, the trial court made a mistake in law in making said order sustaining defendant's motion to quash the said indictment in this, to wit:

First. That the indictment charges the defendant with violating section 8 of the immigration act of February 5, 1917, in—

1. That defendant did, on the 14th day of April, 1919, bring into the United States four Chinese aliens, which said Chinese
35 were then and there laborers and natives of China and not entitled to enter the United States.

2d. That defendant did conceal and harbor said four aliens in a vessel, to wit, a schooner named "Lizzie Vance."

3d. That defendant did bring said four alien Chinese into the United States as stowaways in said vessel.

4th. That defendant did attempt by himself and through another, to wit, Henry Gray and Company, to bring said Chinese aliens into the United States.

Second. That there is no provision under the earlier act that denounces the acts in said indictment charged as crimes, but the crimes are specifically provided for by said section 8 of the immigration act.

Third. The earlier act, to wit, the Chinese exclusion act, does not treat of the specific subjects which make and constitute the crimes set out in the indictment herein.

Fourth. That section 1 of the immigration act of February 5, 1917, defines the word "alien" to be "any person not a native born or naturalized citizen of the United States."

Fifth. That section 8 of said act provides "That any person who shall (a) bring into the United States by vessel * * *, (b) or shall attempt by himself or through another to bring into * * * the United States by vessel, (c) or conceal or harbor in any vessel

any alien * * * not lawfully entitled to enter or reside within the United States, under the terms of this act shall be deemed guilty, etc." (d) Section 3 of said act excludes from admission into the United States stowaways as persons not lawfully entitled to enter the United States.

36 Sixth. Section 38 of the immigration act does not repeal, alter, or amend section 11 of the Chinese exclusion act, in that section 8 of the immigration act legislates upon separate and entirely distinct matters not touching upon nor provided for by the Chinese exclusion act, and provides that any person who commits the acts denounced by said section 8, irrespective of the nationality of the aliens, is guilty of a misdemeanor, and therefore the only basis for a prosecution of the acts set out in the indictment herein is section 8 of the immigration act.

ANNETTE ABBOTT ADAMS,
United States Attorney.
BEN F. GEIS,
Asst. United States Attorney,
Attorneys for Plaintiff.

Dated November 22, 1919.
Receipt of copy hereby admitted this 22nd day of Nov., 1919.
GEO. A. McGOWAN,
Atty. for Deft.

(Endorsed:) Filed Nov. 22, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

37 At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the court room thereof, in the city and county of San Francisco, State of California, on Saturday the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and nineteen.

Present: The honorable Frank H. Rudkin, district judge.

UNITED STATES OF AMERICA, *vs.* JAMES BUTT.	No. 7825.

Order granting motion to vacate order sustaining motion to quash.

This case came on regularly this day for hearing on motion to vacate order sustaining motion to quash. The respective attorneys being present, the court ordered that said motion be granted and that this matter be continued to December 6, 1919, for further hearing on motion to quash and plea in abatement.

38 In the Southern Division of the United States District Court for the Northern District, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Demurrer to plea of once in jeopardy.

Comes now the above-named plaintiff by and through the United States attorney, attorney for plaintiff, and demurs to defendant's plea of once in jeopardy and that defendant has already been acquitted of the charges in the indictment herein and for cause and as grounds of demurrer assigns:

I.

That the said plea, and the ground upon which the same is based does not state facts sufficient to constitute once in jeopardy in nor an acquittal of the charges, or either or any of the charges set out in the indictment herein.

II.

That the said plea does not state facts sufficient to constitute once in jeopardy in nor an acquittal of the crime charged against the defendant in the first count of the indictment herein.

III.

That the said plea does not state facts sufficient to constitute once in jeopardy in nor an acquittal of the crime charged against the defendant in the second count of the indictment herein.

39 IV.

That the said plea does not state facts sufficient to constitute once in jeopardy in nor an acquittal of the crime charged against the defendant in the third count of the indictment herein.

V.

That the said plea does not state facts sufficient to constitute once in jeopardy in nor an acquittal of the crime charged against the defendant in the fourth count of the indictment herein.

Wherefore plaintiff prays that the said plea of once in jeopardy be denied.

BEN F. GEIS,
Asst. United States Attorney,
Attorney for Plaintiff.

Certificate of counsel.

As the attorney for the plaintiff, United States of America, I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law and the same is not interposed for the purpose of delay.

Dated San Francisco, Cal., December 4, 1919.

BEN F. GEIS,
Asst. U. S. Atty., Attorney for Plaintiff.

(Endorsed:) Receipt of a copy of the within is hereby admitted this 5th day of Dec., 1919.

GEO. A. MCGOWAN,
Atty. for Defendant.

Filed Dec. 5, 1919. W. B. Maling, clerk. By C. M. Taylor, deputy clerk.

40 In the Southern Division of the United States District Court for the Northern District of California, First Division.

THE UNITED STATES OF AMERICA
vs.
JAMES BUTT, ALIAS WONG SING. } No. 7825.

Opinion and order sustaining motion to quash indictment, December 12, 1919.

George A. McGowan, Esq., attorney for defendant.

Annette Abbott Adams, United States attorney, and Ben. F. Geis, Esq., assistant United States attorney, attorneys for the United States.

Memorandum.

RUDKIN, District Judge: On the 27th day of May, 1919, an indictment was returned into this court, containing three counts, charging that the defendant unlawfully brought four Chinese aliens into the United States. The first two counts were based on section 8 of the immigration act of February 5, 1917, and the third count on section 11 of the Chinese exclusion act of July 5, 1884, 23 Stats., 117. All three counts, however, were based on the same act or transaction, namely, the unlawful landing of four Chinese laborers in the United States. A motion to quash was interposed on the ground of misjoinder and on the further ground that the several counts did not state facts sufficient to constitute a crime. The motion to quash was sustained as to the first and second counts on the authority of Stoneberg vs. Morgan, 246 Federal, 98, from the Circuit Court of Appeals of the Eighth Circuit. The defendant was thereafter tried on
41 the third count before Judge Farrington, and at the close of the testimony a verdict of not guilty was directed by the court

because the Government failed to prove that the Chinese were actually landed within the United States. On the 11th day of June, 1919, a second indictment was returned against the same defendant containing four counts, charging the defendant with bringing the same four Chinese into the United States. All counts of the latter indictment are based on section 8 of the immigration act, supra. A motion to quash the second indictment has been interposed and the motion is accompanied by the record in the former case in the nature of a plea of former jeopardy. The Government has consented to the presentation of the question of former jeopardy in the present form and has stipulated that the proceedings set forth and accompanying the motion actually occurred in this court. The Government concedes that the ruling on the motion to quash in the former case was correct, and also that a verdict of not guilty was properly directed under the third count. But it now contends that inasmuch as the defendant did not proceed far enough to violate section 11 of the exclusion act he is subject to prosecution under section 8 of the immigration act, which is broader and more comprehensive in its terms. In my opinion Congress did not intend that the courts should indulge in any such refinement as this. In other words, Congress either intended that persons bringing Chinese laborers into the United States should be prosecuted under the immigration act or that they should not. Such was manifestly the view of the Circuit Court of Appeals for the Eighth Circuit in the case already cited.

For after discussing at length the rule of construction where
42 a special statute and a general statute cover the same field, the court said:

"In the case at bar the two acts under consideration are not irreconcilable. The Chinese exclusion act may cover and govern the offenses of bringing and aiding or attempting to bring into the United States unqualified Chinese aliens, and the immigration act may cover and govern the offenses of bringing and aiding or attempting to bring other unqualified aliens into the United States, and thus both may stand together and each may have effect. No repeal of section 11 of the Chinese exclusion act may be implied in this case because (1) the two acts may thus stand together and each may have its legitimate effect, and (2) because section 43 of the immigration act expressly provides that that act shall not have the effect to repeal any of the provisions of the Chinese exclusion act. The unavoidable conclusion is that the offenses of bringing in, or aiding, abetting, or attempting to bring unqualified Chinese aliens into the United States, are governed by and punishable under the Chinese exclusion act only, the immigration act is inapplicable thereto, etc."

If this decision be correct it seems manifest that persons "bringing in or aiding, abetting, or attempting to bring in unqualified Chinese aliens into the United States" must be prosecuted under the Chinese exclusion act only and if they do not come within the provisions of that act they are not subject to prosecution under the immigration act. This being the decision of a Circuit Court of Appeals I deem

it my duty to follow it until the question is decided to the contrary by the Circuit Court of Appeals for this circuit or by the Supreme Court of the United States.

The plea of former jeopardy would seem to be good against at least some of the counts of the second indictment, but in view of the conclusion I have reached on the other question involved I deem it unnecessary to attempt to analyze or compare the several counts of the two indictments.

The motion to quash is sustained as heretofore ordered.

December 12th, 1919.

(Endorsed:) Filed Dec. 12, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

In the Southern Division of the United States District Court for Northern District of California, First Division.

THE UNITED STATES OF AMERICA
vs.
JAMES BUTT, ALIAS WONG SING. } No. 7825.

Judgment.

(December 12, 1919.)

In this case the defendant's motion to quash the indictment having been heretofore sustained,

It is ordered that the indictment herein as against James Butt, alias Wong Sing, be, and the same is hereby, dismissed and that he go hence without day and that his bond be and the same is hereby exonerated.

Judgment entered this 12th day of December, A. D. 1919.

WALTER B. MALING, *Clerk.*
By C. W. CALBREATH, *Deputy Clerk.*

(Endorsed:) Entered in vol. 9, Judg. and decrees, at page 249.

44 At a stated term of the District Court of the United States for the Northern District of California, First Division, held at the court room thereof, in the city and county of San Francisco, State of California, on Thursday the eighteenth day of December, in the year of our Lord one thousand nine hundred and nineteen.

Present: The Honorable Frank H. Rudkin, district judge.

UNITED STATES OF AMERICA
vs.
JAMES BUTT. } No. 7825.

Order allowing an exception on behalf of the United States to the order heretofore entered granting the motion to quash indictment.

On motion of B. F. Geis, Esq., assistant United States district attorney, the court ordered that an exception be and the same is hereby entered on behalf of the United States to the order heretofore

entered, and that the motion to quash the indictment herein be granted.

45 In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Petition for writ of error.

Comes now the plaintiff, the United States of America, by and through Annette Abbott Adams, United States attorney, and Ben F. Geis, assistant United States attorney, and petitions this court for a writ of error herein to the Supreme Court of the United States, and says:

That the writ of error is from a judgment and decision of the above-entitled court quashing the indictment in the above-entitled action, and which said judgment and decision is based upon the construction of section 8 of the immigration act of February 5, 1917, upon which said indictment is founded.

That on the 12th day of December, 1919, the above-entitled court entered a judgment and decision herein against this plaintiff, wherein the above-entitled court quashed the indictment herein against the said defendant; that in said judgment certain errors were committed to the prejudice of the said plaintiff, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore the plaintiff prays that the writ of error may issue in its behalf out of the Supreme Court of the United States for
46 the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States in the city of Washington, D. C.

Dated December 23rd, 1919.

ANNETTE ABBOTT ADAMS,
United States Attorney,
BEN. F. GEIS,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Receipt of a copy of the within admitted this 23rd day of Dec., 1919.

GEO. A. MCGOWAN,
Atty. for Defendant.

(Endorsed:) Filed Dec. 24, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

47 In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Assignment of errors.

Comes the above-named plaintiff, the United States of America, by its attorneys, Annette Abbott Adams, United States attorney, and Ben F. Geis, assistant United States attorney, makes and files the following assignment of errors upon which said plaintiff will rely, to wit:

I.

That the court erred in quashing the indictment in the above-entitled case.

II.

That the court erred in holding that persons wilfully, unlawfully, feloniously, and knowingly bringing unqualified Chinese laborers into the United States could not be prosecuted under section 8 of the immigration act of February 5, 1917.

III.

That the court erred in holding that persons wilfully, unlawfully, feloniously, and knowingly bringing unqualified alien Chinese laborers into the United States could be prosecuted only under
48 section 11 of the Chinese exclusion act of July 5, 1884 (23 Stat., 117).

IV.

That the court erred in its judgment quashing said indictment in construing section 8 of the immigration act of Feb. 5, 1917, as not being applicable to defendant who is charged in the indictment herein with—

First. Wilfully, unlawfully, knowingly, and feloniously bringing four Chinese aliens not entitled to enter the United States into the United States by vessel, knowing at the time of the commission of the act that said Chinese were not entitled to enter, remain in or be in the United States as set out in the first count of said indictment.

Second. Wilfully, unlawfully, knowingly, and feloniously concealing and harboring in a vessel four Chinese aliens not entitled to enter the United States, knowing at said time that said Chinese were not entitled to enter, remain in, or be in the United States, as set out in the second count of said indictment.

Third. Wilfully, unlawfully, knowingly, and feloniously bringing into the United States four alien Chinese stowaways, knowing at said time that said Chinese were stowaways not entitled to enter, remain

in, or be in the United States, as set out in the third count of said indictment.

Fourth. Wilfully, unlawfully, knowingly, and feloniously attempting by himself and through another to bring into the United States four Chinese aliens, knowing at the time of said attempt that said Chinese aliens were not entitled to enter, remain in, or be in the United States, as set out in the fourth count of said indictment.

V.

That the court erred in its judgment and decision quashing
49 the indictment herein in construing section 8 of the immigration act and section 11 of the Chinese exclusion act, by adjudging and deciding "that persons bringing in or aiding, abetting, or attempting to bring in unqualified Chinese aliens into the United States, must be prosecuted under the Chinese exclusion act only, and if they do not come within the provisions of the Chinese exclusion act, they are not subject to prosecution under the immigration act."

ANNETTE ABBOTT ADAMS,
United States Attorney.

BEN F. GEIS,
Asst. United States Attorney,
Attorneys for Plaintiff.

Receipt of a copy of the within admitted this 23rd day of Dec., 1919.

GEO. A. McGOWAN,
Atty. for Defendant.

(Endorsed:) Filed Dec. 24, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

50 In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JAMES BUTT, ALIAS WONG SING, DEFENDANT.	No. 7825.

Order allowing writ of error.

On this 23d day of December, 1919, the plaintiff herein, the United States of America, by its attorneys, Annette Abbott Adams, United States attorney, and Ben F. Geis, assistant United States attorney, files herein and presents to the court his petition praying for the allowance of a writ of error, and assignment of errors intended to be urged herein, and praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be presented to the Supreme Court of the United States at Washington, D. C., and that such other and further proceedings may be had as are meet and proper in the premises.

In consideration whereof it is hereby ordered that the writ of error to the Supreme Court of the United States, as prayed for, be and the same is hereby allowed.

WM. H. HUNT,
United States District Judge.

Receipt of a copy of the within admitted this 23rd day of Dec., 1919.

GEO. A. McGOWAN,
Atty. for Defendant.

(Endorsed:) Filed Dec. 24, 1919. W. B. Maling, clerk. By C. W. Calbreath, deputy clerk.

51 In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JAMES BUTT, ALIAS WONG SING, DEFENDANT. } No. 7825.

Order extending time to docket case.

Upon motion of Ben F. Geis, assistant United States attorney, good cause appearing therefor,

It is hereby ordered that the time within which the above-entitled case may be docketed in the office of the clerk of the United States Supreme Court may be and the same is hereby extended for a period of fifteen (15) days from and after the seventh day of March, 1920.

WM. H. HUNT,
United States District Judge.

San Francisco, California, February 26, 1920.

(Endorsed:) Filed Feb. 26, 1920. W. B. Maling, clerk. By C. M. Taylor, deputy clerk.

52 *Certificate of clerk, U. S. District Court, to transcript on writ of error.*

I, Walter B. Maling, clerk of the District of the United States, for the Northern District of California, do hereby certify that the foregoing 51 pages, numbered from 1 to 51, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of the United States of America vs. James Butt, alias Wong Sing, No. 7825, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied in this transcript), and the instructions of the attorney for the plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of eighteen dollars and forty cents ($18.40).

Annexed hereto are the original writ of error (page 53), return to writ of error (page 54), and the original citation on writ of error (page 55).

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 26th day of February, A. D. 1920.

WALTER B. MALING,
Clerk.

[SEAL.] By C. M. TAYLOR,
Deputy Clerk.

53 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the District Court of the United States for the Northern District of California, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America, plaintiff in error, and James Butt, alias Wong Sing, defendant in error a manifest error hath happened, to the great damage of the said United States of America, plaintiff in error, as by its complaint appears.

We, being willing that error, of any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the City of Washington, D. C., within sixty days from the date hereof, in the said United States Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.] W. B. MALING,
Clerk of the United States District Court,
Northern District of California.
By C. M. TAYLOR,
Deputy Clerk.

Allowed by
WILLIAM H. HUNT,
United States District Judge.

(Endorsed:) No. 7825. United States District Court for the Northern District of California, Southern Div., First Division. The United States of America, plaintiff in error, vs. James Butt, alias Wong Sing, defendant in error. Writ of error. Filed Jan. 7, 1920. W. B. Maling, clerk. By C. M. Taylor, deputy clerk.

54 *Return to writ of error.*

The answer of the judges of the District Court of the United States for the Northern District of California to the within writ of error:

As within we are commanded, we certify under the seal of our said district court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Supreme Court, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 7th day of January, A. D. 1920, duly lodged in the case in this court, for the within-named defendants in error.

By the court:

[SEAL.]

WALTER B. MALING,
Clerk U. S. District Court,
Northern District of California.
By C. M. TAYLOR,
Deputy Clerk.

55 *Citation on writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to James Butt, alias Wong Sing, and George A. McGowan, Esquire, his attorney herein, greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the city of Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, Southern Division thereof, 1st Division, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Hunt, United States district judge for the Northern District of California this 7th day of January, A. D. 1920.

WM. H. HUNT,
United States District Judge.

UNITED STATES OF AMERICA, *ss:*

On this 7th day of January, in the year of our Lord one thousand nine hundred and twenty, personally appeared before me, P. A. Robbins, and makes oath that he delivered a true copy of the within

citation to George A. McGowan, Esquire, atty. for defendant in error.

P. A. ROBBINS.

Subscribed and sworn to before me at San Francisco, Cal., this 7 day of January, A. D. 1920.

C. M. TAYLOR,
Deputy Clerk U. S. District Court,
Northern District of California.

Receipt of the within with copy thereof admitted this 7th day of January, 1920.

GEO. A. MCGOWAN,
Atty. for Def. in Error.

(Endorsed:) No. 7825. United States District Court for the Northern District of California, Southern Div., First Div. The United States of America, plaintiff in error, vs. James Butt, alias Wong Sing, defendant in error. Citation on writ of error. Filed Jan. 7, 1920. W. B. Maling, clerk. By C. M. Taylor, deputy clerk.

(Indorsement on cover:) File No. 27546. N. California, D. C. U. S. Term No. 791. The United States of America, plaintiff in error, vs. James Butt, alias Wong Sing. Filed March 12th, 1920. File No. 27546.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
v.
JAMES BUTT, ALIAS WONG SING.
No. 791.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564 (34 Stat. 1246, Comp. Stat. 1916, sec. 1704), respectfully moves the advancement of the above-entitled cause for early hearing during the October, 1920, term of this court.

The defendant in error was indicted in four counts for unlawfully bringing into the United States four Chinese aliens in violation of section 8 of the immigration act of February 5, 1917, c. 29 (39 Stat. 880). A motion to quash the indictment was presented, which alleged, *inter alia*, that said indictment failed to charge the commission of an offense against the laws of the United States. The court held, in sustaining said motion, that the offense of unlawfully

bringing Chinese aliens into this country is punishable *exclusively* by section 11 of the Chinese Exclusion Act of July 5, 1884, c. 220 (23 Stat. 117; Comp. Stat., 1916, sec. 4298), and that the defendant in error, therefore, was not subject to prosecution under the general immigration act of 1917.

The question presented is one of general public importance, affecting the administration of the criminal laws relating to the immigration of Chinese aliens.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

MAY, 1920.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
JAMES BUTT, ALIAS WONG SING.
No. 275.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is here on writ of error granted under the Criminal Appeals Act of March 2, 1907, ch. 2564, 34 Stat. 1246, Comp. Stat. sec. 1704, 6 Fed. Stat. Anno. 2d ed. 149, to review a judgment of the District Court of the United States for the Northern District of California sustaining a motion to quash the indictment charging, according to the construction placed thereon by that court, defendant in error with bringing into the United States by vessel certain Chinese aliens in violation of section 8 of the Immigration Act of February 5, 1917, ch. 29, 39 Stat. 874, 880; Comp. Stat. sec. 4289¼ dd.

The court below based its judgment upon the view that, as the aliens whom defendant in error is charged with bringing into the United States unlawfully

were Chinese, section 8 of the immigration act, upon which the indictment was founded, was inapplicable; that the prosecution must either find its authority in some provision of the Chinese exclusion laws, or fail. Stated differently, that section 8 of the immigration act, *supra*, must be restricted to aliens other than Chinese. To support its ruling, the court cited and relied upon *Stoneberg* v. *Morgan*, 246 Fed. 98, C. C. A. 8th Cir.

APPLICABLE STATUTE.

Section 8 of the immigration act of February 5, 1917, ch. 29, 39 Stat. 874, 880; Comp. Stat. sec. 4289¼ dd., reads as follows:

> That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, or shall conceal or harbor, or attempt to conceal or harbor, or assist or abet another to conceal or harbor in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States under the terms of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $2,000 and by imprisonment for a term not exceeding five years for each and every alien so landed or brought in or attempted to be landed or brought in.

ARGUMENT.

I.

Chinese aliens are embraced within the scope of section 8 of the immigration act of February 5, 1917, supra.

The error of the trial court below may be readily demonstrated by an analysis of *United States* v. *Wong You*, 223 U. S. 67. In that case a Chinese alien had entered the country surreptitiously, in a manner prohibited by the immigration act, and while in transit was arrested under a warrant issued by the Secretary of Commerce and Labor, who acted pursuant to authority conferred upon him by said immigration act. After hearing, the Chinaman was ordered deported. A writ of habeas corpus was thereupon sued out, but subsequently dismissed by the District Court. On appeal the Circuit Court of Appeals reversed the judgment of the trial court on the ground that, as the alien was a Chinese laborer, he could be dealt with only under the Chinese exclusion laws. On writ of certiorari this court reversed the judgment, and disposed of the disputed question in the following language (p. 69–70):

> We are of opinion that the Circuit Court of Appeals made a mistaken use of its principles of interpretation. By the language of the act any alien that enters the country unlawfully may be summarily deported by order of the Secretary of Commerce and Labor at any time within three years. It seems to us unwarranted to except the Chinese from this liability because there is an earlier more cumbrous proceeding which this partially overlaps. The

> existence of the earlier laws only indicates the special solicitude of the Government to limit the entrance of Chinese. It is the very reverse of a reason for denying to the Government a better remedy against them alone of all the world, now that one has been created in general terms. To allow the immigration act its literal effect does not repeal, alter, or amend the laws relating to the Chinese, as it is provided that it shall not, in § 43. The present act does not contain the clause found in the previous immigration act of March 3, 1893, 27 Stat. 569, c. 206, that it shall not apply to Chinese persons, and, on the other hand, as it requires deportation to the trans-Pacific ports from which such aliens embarked for the United States, § 35, it is rather hard to say that it has not the Chinese specially in mind.

The scope of the above decision was thus explained in *United States* v. *Woo Jan*, 245 U. S. 552, 557:

> It concerned Chinese persons, but not the exclusion laws, and it was decided that such persons might offend against the immigration act and be subject to deportation by the Department of Labor if they should so offend. This was the extent of the decision and its language was addressed to the contention that the latter act was applicable to all persons except Chinese because of § 43. The contention was declared to be untenable, and it was untenable.

The above decisions established the following propositions:

1. That the Chinese exclusion laws and the immigration laws each stand in their own integrity.

2. That Chinese persons are aliens within the meaning of the immigration laws.

3. That if Chinese aliens offend against the immigration laws they may be dealt with under those laws even though they might also be dealt with under the Chinese exclusion laws.

It therefore follows that one who brings Chinese aliens into the United States does not escape amenability to the applicable criminal provisions of the immigration laws merely because the aliens are of Chinese origin. Obviously, if the immigation laws embrace Chinese aliens, as ruled by this court, *supra*, it would be difficult to find a legal theory which would except from the reach of those laws one who aids the entry of Chinese aliens, as here charged.

The contrary theory necessarily asserts that while Wong You, to use that case as an illustration, violated the immigration act by the surreptitious manner in which he entered, and could be dealt with under those laws, yet if the facts had further shown that he had been brought in by another, e. g., Butt, the defendant here, the party bringing him in would escape prosecution solely because the alien was of Chinese origin, although that mere fact did not protect the Chinaman himself from the penalties of the immigration act. Such an illogical result furnishes additional demonstration of the error into which the court below fell.

Again, the immigration act forbids, under penalty, the bringing of aliens into this country for certain immoral purposes. Will it be contended that one

may bring a Chinese alien woman in for such purpose and escape criminal liability because no provision of the Chinese exclusion laws forbids such acts? Yet that appears to be in effect the precise ruling of the court below.

II.

Stoneberg v. Morgan, 246 Fed. 98, C. C. A. 8th Cir., upon which trial court below relies, not controlling here.

The *Stoneberg* v. *Morgan case, supra,* can not be held to correctly state the law for the reason that it is out of harmony with the ruling of this court in the *Wong You case,* 223 U. S. 67, *supra,* which latter case the Circuit Court of Appeals failed to take cognizance of. An analysis of the Stoneberg case discloses that the appellate court was of the view that "to allow the immigration act its literal effect" would thereby cause that act to "repeal, alter, or amend the laws relating to the Chinese." The following excerpt from its opinion reveals the error into which it fell:

> In the case at bar the two acts under consideration are not irreconcilable. The Chinese exclusion act may cover and govern the offenses of bringing and aiding or attempting to bring into the United States unqualified Chinese aliens, and the immigration act may cover and govern the offenses of bringing and aiding or attempting to bring other unqualified aliens into the United States, and thus both may stand together and each may have effect. No repeal of section 11 of the Chinese exclusion act may be implied in this case because

> (1) the two acts may thus stand together and each may have its legitimate effect, and (2) because section 43 of the immigration act expressly provides that that act shall not have the effect to repeal any of the provisions of the Chinese exclusion act. The unavoidable conclusion is that the offenses of bringing in, or aiding, abetting, or attempting to bring unqualified Chinese aliens into the United States, are governed by and punishable under the Chinese exclusion act only, the immigration act is inapplicable thereto," * * * (p. 102).

The above conclusion of the court manifests its view that the Chinese exclusion laws furnish the sole guide for dealing with cases involving Chinese aliens, and the immigration laws are a similar guide for all other aliens. Obviously, as hereinbefore pointed out, that view must fail when tested by the principles of construction announced by this court in the *Wong You case, supra.*

The views herein urged also find direct support in such cases as *Ex parte Li Dick*, 176 Fed. 998, *In re Lee Sher Wing*, 164 Fed. 506, *Looe Shee* v. *North*, 170 Fed. 566.

CONCLUSION.

It is respectfully submitted that the judgment below should be reversed.

ROBERT P. STEWART,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

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